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Fifteenth report of the Secretary-General pursuant to paragraph 14 of resolution 1284 (1999)

I. Introduction

1. The present report is submitted pursuant to paragraph 14 of Security Council resolution 1284 (1999), in which the Council requested me to report every four months on the compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains. The report provides a brief account of the relevant developments since my last report (S/2003/1161).

II. Background

2. At its meeting on 18 December 2003, the Security Council expressed its strong hope that those responsible for the horrendous crimes committed against Kuwaiti and third-country nationals would be brought to justice. The United States circulated, for the information of Council members, the statute of the Iraqi Special Tribunal, issued by the Iraqi Governing Council. The United States noted that the Tribunal's jurisdiction extended to trying crimes committed against Kuwaiti and third-country nationals.

3. According to the Justice Minister, Ahmed Baqer, Kuwait had completed 178 major indictments against Saddam Hussein and his top aides for crimes committed during Iraq's 1990/91 occupation of the country. It is estimated that the indictments will reach 200. Prepared by a special committee formed 10 years ago and chaired by a public prosecutor, they are expected to be presented to the Iraqi Special Tribunal.

4. During the reporting period, several regional forums addressed issues pertaining to the repatriation or return of all Kuwaiti and third-country nationals or their remains. The Supreme Council of the Gulf Cooperation Council at its twenty-fourth session, held in Kuwait on 21 and 22 December 2003, issued a statement in which it applauded the statement made by the President of the Security Council on 18 December 2003 on the report of the Secretary-General on Kuwaiti prisoners and third-country nationals; praised the efforts of the International Committee of the Red Cross (ICRC) and the Technical Subcommittee of the Tripartite Commission; and appealed to all the parties concerned to continue their joint efforts to resolve the outstanding problem related to that issue as soon as possible (see A/58/673-S/2004/7, annex II).

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5. In its final communiqué the Fifth Conference of the Ministers for Foreign Affairs of States Neighbouring Iraq, held in Kuwait on 14 and 15 February 2004, strongly condemned the killing of Kuwaiti and Iranian prisoners of war and third-country nationals by the previous Iraqi regime; the ministers also condemned the concealment of those crimes for more than a decade by the previous Iraqi regime, which is considered a violation of international humanitarian law, and called for bringing to trial the perpetrators of those crimes against humanity (see S/2004/121).

III. Recent activities

6. In a letter dated 5 January 2004, the Chargé d'affaires of the Permanent Mission of Kuwait to the United Nations informed the High-level Coordinator that the total number of remains of Kuwaiti and third-country nationals which had so far been identified was 61. In letters dated 23 February, 17 March and 30 March, the Permanent Representative of Kuwait to the United Nations advised Ambassador Vorontsov that the total number of the identified remains had risen to 75, then 82, and, most recently, 92. The names corresponding to the latter figure are listed in the annex, where it is noted that some remains were those of citizens of Egypt, Lebanon and Saudi Arabia.

7. From 15 to 18 March 2004, Ambassador Vorontsov travelled to Kuwait where he was received by the Prime Minister, Sheikh Sabah al-Ahmad al-Jaber al-Sabah. The Prime Minister expressed Kuwait's satisfaction with the extension of the Coordinator's mandate and thanked the latter for his efforts. The Coordinator assured him that he would continue to do his best to bring to a satisfactory closure the issues of missing Kuwaiti and third-country nationals.

8. Ambassador Vorontsov was also received by the Minister for Foreign Affairs, Sheikh Mohammad al-Sabah al-Salem al-Sabah, and the Information Minister, Mohammad A. Abulhasan. He had an extensive conversation with the Kuwaiti National Committee for Missing Persons and Prisoners of War Affairs. He was informed that, in addition to 92 files that had been formally closed, there were about 240 sets of mortal remains that had already been brought to Kuwait. The human remains had been retrieved from the gravesites at Samawa, Karbala and other sites. It is estimated that the total number of remains found in these and several other locations in Iraq could soon reach more than 400.

9. The Coordinator was told, that while the information about burial sites in Iraq allegedly containing the mortal remains of persons considered to be missing continued to come from different sources, including ordinary Iraqis, security considerations in Iraq proved to be very difficult. A Kuwaiti technical team was attacked on the road near Karbala, although there were no casualties. Kuwait was committed to following strict security measures while conducting exhumation operations in Iraq.

10. Ambassador Vorontsov was briefed on the forty-fifth session of the Technical Subcommittee, which was held in Kuwait on 2 March. The session was attended by Kuwait, Saudi Arabia, France, the United Kingdom, the United States, ICRC and the Coalition Provisional Authority representing Iraq. He was pleased to learn about the full cooperation between Kuwait and the Authority on the issues related to the repatriation of Kuwaiti and third-country nationals or their remains and the continued exchange of information within the Technical Subcommittee with regard

to the search and identification of new gravesites. The Technical Subcommittee of the Tripartite Commission authorized full exhumation at several burial sites in Iraq.

11. The Coordinator also learned about the efforts conducted by Kuwait and Iraq to identify the burial sites of several Kuwaitis and gravesites of Iraqis in Kuwait.

12. Last March the Coordinator intended to travel to Baghdad to consult with the Iraqis and the Authority with a view to discussing how the process of closing the remaining Kuwaiti files and returning property, including Kuwaiti national archives, could be expedited. In view of logistical considerations, his visit was postponed.

13. In another development, the Government of Kuwait in December 2003 sought the determination of the Governing Council of the United Nations Compensation Commission of Compensation for the claims of family members of 605 former detainees in Iraq determined to be dead, relating to mental pain and anguish. On 11 March 2004, the Governing Council adopted decision 218 (S/AC.26/Dec.218 (2004)), which sets out, on a per family basis, an amount of compensation of US$ 1,100 per month during the 13-year period of uncertainty about the fate of the detainees. Pursuant to decision 218, the family of a deceased detainee can receive a maximum payment of $200,000 for mental pain and anguish as cumulative awards under that decision and decision 8, adopted by the Governing Council on 27 January 1992. The latter decision fixes a ceiling amount for compensation to be awarded for mental pain and anguish resulting from the death of a family member. However, the Coordinator has been informed that the Government of Kuwait and the families of the deceased detainees are of the opinion that a higher maximum payment for mental pain and anguish should be rewarded to each family.

14. It should be also noted that, in mid-March 2004, the Special Rapporteur of the Commission on Human Rights, Andreas Mavrommatis, submitted a report on the situation of human rights in Iraq (E/CN.4/2004/36), section III of which deals in a detailed manner with the issue of Kuwaiti prisoners of war and missing persons, including third-country nationals. The Special Rapporteur stated that previous Iraqi authorities had often given the order for the almost immediate execution of those prisoners and at the same time had set up an elaborate machinery of deception to hide this fact from the relatives who had the right to know, as well as from the Tripartite Commission and the international community.

15. It also appeared, in view of the information available to the Government of Kuwait, that the remains of about two thirds of the missing persons might be found and identified. The possibility existed, however, that, in a number of cases, the remains of some missing prisoners of war might not be found in the foreseeable future. The Special Rapporteur believed that the international community should remain vigilant and persevere in exerting pressure for the resolution of this humanitarian issue.

IV. Observations

16. Appreciable progress has been made in closing the files of the Kuwaiti prisoners of war and third-country nationals since my December report. The number of resolved cases has increased from 45 to 92 and there are apparently more than 200 files pending identification. This is evidence of a steady movement forward and a result of commendable cooperation among the Tripartite Commission members.

The Commission remains the principal mechanism for dealing with the issue of persons unaccounted for. The Coordinator will continue to work in close contact with the Commission and the Government of Kuwait.

17. I would like to reiterate my strong condemnation of the execution of Kuwaiti and third-country nationals by the previous Iraqi regime in violation of human rights and international humanitarian law. The perpetrators of those despicable crimes should be brought to justice. I also take this opportunity to once again offer my sincere condolences to the families of the Kuwaiti and third-country nationals who are now facing the grim truth about the fate of their loved ones.

18. The extension by the Security Council of the Coordinator's mandate should contribute to bringing to a closure the remaining humanitarian issues of concern to the State and people of Kuwait and keep the international community informed of this process.

19. It will be important for Ambassador Vorontsov to visit Baghdad to establish contacts with the new Iraqi authorities and continue to confer with the representatives of the Coalition Provisional Authority in order to advance the fulfilment of the mandate given by the Security Council in resolution 1284 (1999). I am aware of the challenges facing the Iraqi Governing Council in the run-up to 30 June 2004. However, Iraq continues to have international obligations with regard to the repatriation or return of all Kuwaiti and third-country nationals or their remains and the return of property in accordance with paragraph 14 of resolution 1284 (1999).

Annex

Names of Kuwaitis and third-country nationals whose remains have been identified

1. Saad Meshal Aswad Salamah al-Enezi
2. Ahmed Abdullah Abdulrasul al-Ghallaf
3. Saleh Ali Said al-Hayani
4. Enam Said Ahmad Said Ismail al-Edan
5. Abdullatif Hussein al-Waheb
6. Naser Hussein Omaran al-Enezi
7. Mahmoud Sayed Reda Sayed Hasan
8. Faihan Mohammad Laili al-Mutairi
9. Nasser Sherif Fahed al-Khaldi
10. Daad Omar al-Hariri (Lebanese)
11. Jassem Hamid Abdallah al-Samak
12. Safah Ibjad Aloush al-Mutairi
13. Lafi Faihan Mohammad Laili al-Mutairi
14. Abdul Rahman Saad Marzook al-Otaibi
15. Mohammed Gazai Saad Ali al-Mutairi
16. Farhan Harbi Saket al-Dhafiri
17. Obaid Falah Husaini al-Mutairi
18. Hamad Mohammad Ghuneim al-Ajami
19. Taleb Amin Jassem Saleh
20. Fahed Sulayman Aswad al-Enezi
21. Fahed Akil Rakan al-Zufayri (Saudi citizen residing in Kuwait)
22. Misfir Mhana Misfir al-Sharifa al-Hayani
23. Nasser Ayed Duhayran al-Oteibi
24. Mohammad Nasser Sharid al-Ajami
25. Assal Turki Kusayman al-Ajami
26. Abdallah Sulayman Abdallah al-Amir
27. Abdulaziz Yussef Abdulaziz Alyamani
28. Amer Deydan Ali al-Ajami
29. Sobhi Khalil Nousouhi Haydar (Lebanese)
30. Raja Hamud Saleh al-Sahli
31. Khaled Saleh al-Tuwaygeri

32. Adel Fahed Hamad al-Hamad
33. Fahed Khalifa Jadian al-Mutayri
34. Salem Obeid Abdallah al-Mutayri
35. Shojah Madi Omar al-Ajami
36. Habib Saleh al-Zaqah
37. Ali Abdallah Ali al-Duwaysan
38. Maayuf Jaber Sahud al-Harbi
39. Yaccoub Yussef Bader al-Ustaz
40. Mansour Tulayhan Samar al-Mutayri
41. Hamad Humaydi Ghazi al-Otaibi
42. Mohsen Mohammad Mohsen al-Ajami
43. Rajeh Zeyab Bedah Nahar al-Mutayri
44. Mansour Faleh Nasser al-Thaqeb
45. Ahmad Mahmoud al-Hattab (Egyptian)
46. Jaber Helal Shedid al-Shemary
47. Falah Jaser Saad Guniman al-Mutayri
48. Jatly Mohammad Mejaed al-Mutayri
49. Husain Salem Faza al-Shamry
50. Khalifa Trak Suliman al-Shamry
51. Adel Faleh Satam al-Fadly
52. Adnan Mohamad Bahbahani
53. Tareq Falah Alaeban al-Shaemry
54. Hamoud Nafel Saeid al-Harshany
55. Nabil Ali Ramadan Bushehray
56. Mutlaq Ali Salman al-Adwani
57. Waleed Saad Mubarak al-Asaf
58. Abdulah Fares Ayed al-Shamry
59. Bader Nahar Mefrij al-Mutayri
60. Matar Saket Mater al-Mayai al-Anezi
61. Waleed Ayoub Ismail Bander
62. Helal Saleh Malis al-Mutayri
63. Abdulaziz Abdultalif Abdulaziz al-Kharaz
64. Mubarak Saleh Herzan Malis al-Mutayri
65. Hamoud Ebrahim Harfan al-Sahly

66. Saad Murshid Jasir al-Barazi
67. Raeid Abdulla Khalil Burashid
68. Saleh Hamoud Mansour Hamoud
69. Abdulmehdi Mehdi Ali Tahir
70. Hussam Mohammad Abdulmohsen al-Oseimi
71. Abdalla al-Oweyhan
72. Hussein Mohammad Jomah
73. Hassan Abdulmohsen al-Ali
74. Mohammad Makboul al-Otaibi
75. Ali Hassan Awad al-Azmi
76. Hamoud Nassir Baanoun el-Enezi
77. Khalaf Akil Ali al-Dhafiri
78. Saad Bashir Mubarak al-Rashidi
79. Mohammad Rashid Nabi al-Duwaila
80. Nawaf Abdulla Farraj al-Mutairi
81. Saleh Mathal Jasser al-Mutairi
82. Mohammad Ahmad Shaher al-Sharifi
83. Abdulla Deydan Kazar al-Dhafiri
84. Maged Jaber Fyhan el-Enezi
85. Tarek Mohammad el-Qahtany
86. Meshal Jazza el-Enezi
87. Fawzy Ali Ebrahim al-Mulla
88. Saleh Naser al-Khenah
89. Esam Yaccoub Saadallah
90. Meshal Yussef Ali Reda
91. Hany Ahmed al-Musilikh
92. Ahmed Ali al-Kandary (Iranian)